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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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Federal-State Joint Board)
On Universal Service)
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CC Docket No. 96-45
(Report to Congress)

**COMMENTS OF THE
EDUCATION AND LIBRARY NETWORKS COALITION**

Introduction

The Education and Library Networks Coalition ("EDLINC")¹ submits these Comments in response to the Commission's request for comments in connection with its forthcoming Report to Congress regarding the implementation of the provisions of the Telecommunications Act of 1996 relating to universal service. EDLINC strongly supports the manner in which the Commission has implemented those provisions, and urges the Commission to stand by its decisions.

**I. CONGRESS GRANTED THE COMMISSION BROAD AUTHORITY TO
ESTABLISH A NEW UNIVERSAL SERVICE MECHANISM.**

The Commission has asked for comments in five specific areas, but a response tailored only to those questions would miss the point. Focusing on a few details will not put the question of the reasonableness of the Commission's universal service rates in the proper perspective. The truth is that Congress delegated its authority to the Commission, gave the Commission broad and

¹ The members of EDLINC are listed in the attached Appendix.

sometimes conflicting instructions, and left to the Commission the difficult task of developing a workable program that met Congressional goals.

Section 254 is not a detailed code addressing every issue that might arise in the course of establishing and implementing a universal service mechanism. Instead, Congress established general principles and general goals for universal service. For example, Section 254(b) is expressly a statement of broad policy principles, such as “access to advanced telecommunications and information services should be provided in all regions of the nation.” Section 254(b)(2). The Act does not define “advanced telecommunications and information services.” Similarly, Section 254(c)(1) defines universal service as “an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.” There are many other examples of the broad and general scope of Section 254.

While the 1996 Act does contain some specific provisions, the only fair reading of Section 254, as the above excerpts illustrate, is that it is a general directive to the Commission to establish a mechanism along the general lines established by Congress. Consequently, the Commission was given broad discretion, and Congress knew it. *See Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). This is the classic role of an administrative agency, and it should hardly be surprising that in making the hard decisions needed to comply with Congress’s general goals the Commission disappointed many interested parties. EDLINC itself argued for a number of positions that the Commission rejected.²

The language of the Act pertaining to universal service for schools and libraries is as general as that quoted above. Section 254(c)(3) states that “in addition to the services included

² For example, EDLINC’s positions on TSLRIC, Wide Area Networks, eligible contracts, the applications process, and definitions for libraries and schools have been denied by the Commission at various points in this process.

in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).” Here again the Commission is given broad general authority. Even when the Act is fairly specific, as in Section 254(h)(1)(B), where it prescribes that schools and libraries are to be eligible for discounted rates, the Act leaves many questions unanswered, such as the amount of the discounts. The Act says only that the amount is whatever the Commission and the States “determine is appropriate and necessary to ensure affordable access to and use of such services.”

The Commission has come under sharp attack from more than one quarter for both the scope of the universal service mechanism and the details of its implementation. But many of the details of the Commission’s implementation were necessary to accomplish larger goals, goals that not only fall within the ambit permitted by the broad and general Congressional language, but are required to implement stated Congressional policy.

For example, the overall cost of universal service and the funding mechanisms used to meet that cost are functions of the scope of the mechanism. If Congress had specified a narrow set of services to be available for discounts, or strictly limited the amount of the discounts, the Commission might have adopted different funding mechanisms. But Congress did not do those things. In fact, the language of Section 254, and Section 254(h)(2) in particular, expresses a desire for the Commission to adopt an expansive, wide-ranging set of provisions. And the legislative history is equally expansive, saying that the purpose of Section 254(h) is “to ensure that ... elementary and secondary classrooms, and libraries have affordable access to modern telecommunication services that will enable them to provide ... educational services to all parts

of the Nation.” H. Rep. 104-458, 104th Cong. 2d Sess., at 132 (Jan. 31, 1996) (“Conference Report”).

If Congress had intended for the Commission to adopt a specific, carefully delineated, universal service mechanism, it could have directed the Commission to do so. But, recognizing the complexity of the issue and the Commission’s expertise in the telecommunications field, Congress chose instead to give the Commission general guidance and broad discretion, along with some specific requirements. For critics to now accuse the Commission of overstepping its bounds or ignoring Congressional intent is unreasonable and incorrect.

II. THE COMMISSION’S RULES ENHANCE COMPETITION, WHILE RESTRICTIVE READINGS OF THE ACT WILL FAVOR INCUMBENTS AND LIMIT CONSUMER OPTIONS.

One of the points EDLINC made in its comments before the Joint Board and later before the Commission was that the universal service mechanism should enhance competition. We argued on several different occasions for allowing as many different classes of providers to provide discounted services and receive universal service fund support as possible. The Commission did not adopt all of our recommendations in this regard, but it did make a significant effort to encourage competition.

For example, the Commission’s decision to allow nontelecommunications providers to receive universal service support is critical if competition is to develop between traditional telecommunications providers and new providers of telecommunications services and the functional equivalents of telecommunications services. There is currently very limited competition for local exchange service and other services that schools and libraries use most. This is especially true in non-urbanized areas where, in many cases, there is only one service provider, and that incumbent service provider may not be capable of providing many of the

services schools and libraries need to fulfill their educational missions.³ The Commission's rules allow cable operators, wireless providers, and any other entity capable of delivering services to schools and libraries to offer to do so and to receive universal service funding. Over time, this technologically neutral approach offers the possibility that nontraditional providers will be able to develop new markets serving the educational community. Those markets could later serve as the basis for competition in other areas. This both furthers the aims of the Act to promote competition and meets the letter of the law which requires competitive neutrality in the implementation of universal service.

On the other hand, some parties rely on a narrow interpretation of Section 254(e) to argue, in effect, that only incumbent local exchange carriers should be eligible to provide discounted services. But that result would be counter to the goal of the 1996 Act itself, which expressly encouraged competition. Allowing only a small class of entrenched incumbents to receive universal service support would defeat that goal: to obtain discounts, schools and libraries would have no choice but to buy service from a single source. This would not only discourage competition, but defeat the purpose of Section 254(h) itself: without an incentive to offer lower rates, the incumbent LEC's would continue to charge schools and libraries high tariffed rates. The result would be a relatively small benefit to schools and libraries, a greater drain on the universal service fund, and no benefit to competitive conditions in general.

³ For instance, broadband telecommunications services necessary to serve large numbers of users are not available in many areas of the country and, in areas where they are available, they are inordinately expensive. For example, during the confirmation hearings for William Kennard as Chairman of the FCC, Senator Conrad Burns of Montana cited the unavailability and inordinate cost of traditional landline telecommunications as the two major barriers access for schools in rural Montana (See "Some Small School Districts Find Good Internet Access too Expensive," Congressional Record, 10/29/97, p.S11306). This anecdotal evidence is corroborated by national statistics; for instance, a recent study shows that, among public libraries, one in three urban library systems has public access to the world wide web, but only one in ten public library systems in rural areas can offer public access to the web (see "The 1997 National Survey of U.S. Public Libraries and the Internet: Summary Results," November 1997, <http://www.ala.org/oitp/plcon97sum/>). And, the latest school survey on advanced telecommunications says that while one in three urban private schools have access to the Internet, only one in 25 rural private schools has access

Some parties have also claimed that the universal service fund is not competitively neutral for telecommunications carriers in that they must pay into the fund while Internet service providers (“ISP’s”) and providers of internal connections do not. We must reiterate that this is incorrect, both with respect to the right to receive payments from the universal service fund, and the obligation to pay into the fund. Section 254(d) states that telecommunications carriers are required to contribute only on the basis of their telecommunications revenues, not on revenues for Internet-related services. Since carriers by definition are not directly competing with non-telecommunications carriers in the provision of telecommunications services, the fact that they pay into the fund while ISP’s do not does not place them at a disadvantage with respect to the ISP’s. In addition, telecommunications carriers are permitted to provide Internet-related services. To the extent they do so, they are in the same position as other ISP’s: the revenues from these services are not subject to universal service contribution requirements, and the providers are eligible for reimbursement from the fund for the amount of any discounts on those services.

Thus, to the degree that the language of the 1996 Act might support interpretations that limit who may receive universal service support to “eligible telecommunications carriers” designated under Section 214(e), that language contradicts both the goal of increased competition and the goal of meaningful reductions in the rates paid by schools and libraries. In ¶¶ 589-600 of the Report and Order the Commission explained that Section 214(e) does not apply to the school and library discounts because Section 254(h)(2) gives the Commission broad authority regarding the discount mechanism. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (released May 8, 1997) (the “Report and Order”). To achieve the goal of competitive neutrality, the Commission concluded that it was necessary to

to the Net (see “Advanced Telecommunications in U.S. Private Schools K-12 Fall 1995,” June 1997, National Center for Education Statistics).

allow entities other than "eligible telecommunications carriers" to receive universal service support. The Commission thus acted wisely and within its discretion in broadening the number of providers eligible to draw on universal service funding.

III. THE COMMISSION HAS THE AUTHORITY TO ESTABLISH DISCOUNTS FOR INTERNET ACCESS.

In the Report and Order, the Commission carried out Congress' intent that schools and libraries receive not just discounted telephone rates, but discounts designed to ensure that students and library patrons gain access from classrooms and libraries to the Internet. To accomplish this, it crafted in a careful and deliberate manner a complete package of discounts that would make it affordable for schools and libraries to wire their buildings, make local and long distance telephone calls for educational and distance learning purposes, and gain access for their students and patrons to the Internet. Each component of this complete package is integral, and elimination of any component will reduce the value of the other components. Eliminating Internet access from this package of discounts would leave a gaping hole in the entire package, and would fall short of the Congressional goal of allowing students and lifelong learners to capitalize on the fruits of the Internet. In short, we would be giving our children and patrons most of the tools that they need -- wires, routers, hubs, telecommunications services -- but denying them the ability to access a wealth of information resources, share locally-created information, and communicate with others around the globe.

Accordingly, we urge the Commission to stand by the Report and Order and its decision to include Internet access in the definition of services eligible for discounts. The Commission has the authority under Section 254(h)(2) to adopt rules to enhance access to telecommunications services and information services for all school classrooms and libraries. As the Commission explained at ¶¶ 436-448 of the Report and Order, Section 254(h)(2) is not limited to

“telecommunications services,” but expressly includes access to “information services.”

Therefore, to the extent that provision of Internet access involves the provision of information services, the Commission has the authority under Section 254(h)(2) to include Internet access among the services eligible for discounts. Indeed, Congress anticipated that Internet access would be included. The Congressional intent with regards to the Internet as a medium to access information services is made clear by the Conference Report on the 1996 Act:

New subsection (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State, and local governments, and information services which can be carried over the Internet.

Conference Report at 133.

The Commission also wisely chose to make clear the distinction between access to information services, which is eligible for discounts, and information services themselves, such as commercial databases, which are not eligible for universal service discounts.

Furthermore, as the Commission noted, quoting our earlier comments, the Internet has quickly become a key information resource and means of communication. Report and Order at n. 1150. For the Commission to exclude Internet access from the list of eligible services would thus undercut the entire purpose of Section 254(h).⁴

In short, the Commission did not act unreasonably in making Internet access eligible for discounts. Instead, the Commission was clearly fulfilling its mandate to create technologically neutral rules to enhance schools’ and libraries’ access to information resources. The

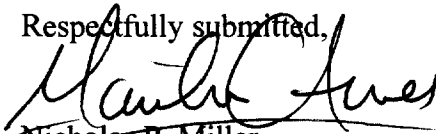
⁴ In the floor debate on the 1996 Act, Senator Snowe said “If we want young people to actually use the technology of the future so it becomes second nature to them, then we must ensure that schools are part of the national information infrastructure.” Cong. Rec. 5708 (Feb. 1, 1996).

Commission's decision to allow discounts on Internet service is based on solid legal and policy ground.

Conclusion

EDLINC believes the Commission has implemented Section 254(h) and related provisions of the Communications Act in a manner consistent with the plain language of the Act and the intent of Congress. The Joint Board Recommendations and the Report and Order amply illustrate the complexity of the issues that faced the Commission. Faced with a difficult task, the Commission performed it well and has no reason to reconsider its approach to implementing Section 254.

Respectfully submitted,



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Appendix: The Members of EdLiNC

Alliance for Community Media
American Association for Adult and Continuing Education
American Association of Educational Service Agencies
American Association of School Administrators
American Library Association
American Psychological Association
Association for Education Communications and Technology
Association for Supervision and Curriculum Development
Association for the Advancement of Computing in Education
Center for Media Education
Consortium for School Networking
Council for American Private Education
Council for Educational Development and Research
Council of Chief State School Officers
Education Legislative Services, Inc.
Educational Testing Service
Federation of Behavioral Psychological and Cognitive Sciences
Global Village Schools Institute
International Society for Telecommunications in Education
Lutheran Church -- Missouri Synod
International Telecomputing Consortium
National Association of Counties
National Association of Elementary School Principals
National Association of Independent Schools
National Association of Secondary School Principals
National Association of State Boards of Education
National Association of Student Financial Aid Administrators
National Catholic Educational Association
National Education Association
National Grange
National Rural Education Association
National Rural Electric Cooperative Association
National School Boards Association
Organizations Concerned about Rural Education
People for the American Way Action Fund
United States Catholic Conference
United States Distance Learning Association